IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

CRL.A.No. 1232 of 2001(A)

(C.C. NO.116/96 OF JUDICIAL 1ST CLASS MAGISTRATE PAYYANNUR.)
.....

APPELLANT: PETITIONER/ COMPLAINANT

KUTTIYAN VALAPPIL ABOOBACKER,
AGED 42 YEARS, S/O.JUNHAMMED, RESIDING
AT MUTTIL DESOM, CHERUKUNNU DESOM.

BY ADV. SRI.M.RAMESH CHANDER
SRI.M.VIJAYAKUMAR

RESPONDENTS: RESPONDENTS/ ACCUSED
----

1. **KUTTIYAN VALAPPIL HAMZA,**
S/O.KUNHAMMED, AGED 35 YEARS,
RESIDING AT EZHOME AMSOM, NARIKODE.

2. **CHELLAN PUTHIYAPURAYIL ABDULLA,**
AGED 42 YEARS, RESIDING AT CHENGAL,
ERIPURAM.

BY ADV. SRI.O.V.MANIPRASAD
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO. 1232 OF 2001

DATED THIS THE 12th July 2007

JUDGMENT

The appellant is the complainant in C.C.No.116/96 in the file of the Judicial First Class Magistrate, Payyannur, the private complaint filed alleging offences under Sections 143, 147, 148, 324 read with Section 149 I.P.C. The case of the complainant is that on 5-6-1995 at 8.45 p.m., when the complainant was going to his house at Muttil through the Payangadi bridge, the first accused, his brother, the 2nd accused and three others confronted him and the first accused beat him with the handle of an axe and the 2nd accused sprinkled pepper powder on his face and looted Rs.3720/- kept in his shirt pocket. It is also brought out that a police complaint had been filed but the police filed a refer report. Hence, the protest complaint filed on 20-11-1995.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2. The date of incident is 5-6-1995. It is the version of PW1 that he was admitted in the hospital on

5-6-1995 and that he was in the hospital upto 12—6—1995 as inpatient. It is seen that the complainant/appellant has not produced any documents to substantiate the case that he was admitted in the hospital on the same day and treated as an inpatient upto 12-6-1995. He has also not summoned or produced the complaint, i.e. allegedly filed before the police. It is an admitted case that there was civil and criminal litigations in between himself and his brother, who is the first accused. The court below has also noted a number of contradictions with respect to his evidence and the allegations in the complaint.

In the circumstances and in view of the constraints of the revisional jurisdiction in a case of acquittal, I find no reason to interfere in the order of the court below acquitting the accused. The appeal is dismissed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.A. 1232 of 2001
JUDGMENT

12-7-2007